

him personally apprehended, which was a more assured way of knowledge than if it had been done at the kirk. This allegiance was also repelled, in respect of the personal premonition; neither was it respected, that the defender alleged, that reversions are *stricti juris*, and that conditions agreed upon betwixt parties ought not to be changed; and 3dly, It being *alleged*, That the order could not be sustained, because it was not used by a procurator, having power of the party to use the order, as is ever observed in all the like cases; but it is only used by a messenger, by virtue of the Lords' letters, passing upon a bill given in to the Lords, at the instance of the party who comprised, whereby he craved warrant to the messenger, to make the said premonition, and use the said order; which being sought by the party, and granted by the Lords, is against all form and practice, and ought not to be sustained, but must be done *periculo impetrantis*;—THE LORDS also repelled this allegiance, in respect the party ratified and approved the order, and allowed the same: And the LORDS found, That they would not cast nor avert the order for this alleged defect, nor for any other of the alleged defects in the foresaid allegiances; but this is not in use to be done in redemptions, and I remember not of any other used in this manner. See REDEMPTION.—DEATH.

Act. Nicolson & Sibbald.

Alt. Rollock.

Clerk, Gibson.

Fol. Dic. v. 1. p. 130. Durie, p. 866.

1667. January 2. OLIPHANT *against* HAMILTON of Kilpoty.

WILLIAM OLIPHANT having obtained a decret for pointing of the ground against Hamiton, he suspends on this reason, That he was neither decerned as heir, nor possessor, but as apparent heir to the heritor, and was never charged to enter heir.

THE LORDS repelled the reason, and found this action, being real, was competent against the apparent heir without a charge.

Fol. Dic. v. 1. p. 130. Stair, v. 1. p. 422.

No 6.

A pointing of the ground is competent against an apparent heir, without a charge to enter.

1667. June 26. MR DAVID DEWAR *against* PATERSON.

MR DAVID DEWAR pursues a transference of a count and reckoning which formerly was depending betwixt him and umquhille Henry Paterson, and craves it may be transferred against Henry the heir, and proceed where it left.—It was *alleged* for the defender, absolvitor, because the citation was given before year and day, after the defunet's death, contrary to the defender's privilege of his *annus deliberandi*, by which he hath *inducias legales*, and cannot be forced to own or repudiate the heritage.—The pursuer *answered, first*, That *annus deliberandi* is only competent, where the apparent heir is charged to enter heir,

No 7.

Reductions, declarators, and other real actions, which have no personal conclusion against the heir, require no general charge to enter heir